

REMARKS

Applicant respectfully requests reconsideration and allowance of claims 1-20 that are pending in the above-identified patent application. In view of the following discussion, Applicant submits that all pending claims are in condition for allowance.

Finality of the Office Action

As will be established below, Applicant submits that by not properly understanding the claim language (i.e., through error) the Examiner did not address the merits of Applicant's arguments in the remarks section of the July 16, 2007 amendment. Thus, Applicant requests the withdrawal of the finality of the October 4, 2007 Office Action, reconsideration of Applicant's remarks, and/or allowance of the application.

Claim Rejections Under 35 U.S.C. § 103(a)

U.S. 5,152,284

At pages 2-5 of the Office Action, the Examiner rejected claims 1-10 and 17-20 under 35 U.S.C. § 103(a) as being obvious over U.S. 5,152,284 ("the '284 patent" or "Valentini"). Applicant respectfully traverses the Examiner's rejection.

Independent claims 1 and 17 require that "the features forming the outer contour of the capsule are symmetrical with respect to a transverse plane which bisects the longitudinal axis," excluding "fine structures of any seams which are produced by the sealing of the seams of the individual parts of the capsule, and/or - elements formed on the capsule surface which are smaller than 0.1 mm, and/or - angles of taper up to 5°." The claimed process and structure regarding symmetry results in identical inflow and vibration conditions irrespective of the direction of insertion of the capsule into the inhaler.

In response to Applicant's July 16, 2007 amendment, the Examiner stated that our argument was "not well taken because claims requires certain features being 'excluded' from the conditions of symmetry, and limitation of '5' degree is one of them. If applicant believes that Valentini does not teach '5 degree' then Valentini meets the claimed limitation." Applicant submits that the Examiner

misunderstands the claim language and, thus, not giving same due consideration in view of the prior art.

Applicant submits that the capsule of Valentini does not fall within the exclusion to the conditions of symmetry as claimed because Valentini does not have a taper up to 5°. Please refer to the accompanying Figure at the end of the present response illustrating that Valentini does not have a taper excluded from the conditions/requirements of symmetry. The attached Figure shows the Valentini capsule juxtaposed to a capsule with a 5° taper. The tapered capsule is excluded from the claimed symmetry requirement, the Valentini capsule is not. All figures of Valentini disclose a capsule with an elevation (a step) that is substantially perpendicular (at an angle of 90°). Thus, Valentini does not show a taper up to 5°. As such, the substantially perpendicular step of the capsule of Valentini is not excluded from the conditions of symmetry, and, therefore, the capsule is not symmetrical.

The Examiner alleges that the capsule of Valentini is symmetrical with respect to a transverse plane which bisects the longitudinal axis – as claimed. This allegation, however, is incorrect on two grounds: first, the capsule contains pre-cut holes 42, 44 on one capsule part but not on the other part; and second, each capsule part is a different size, resulting in the discontinuity (a step) near the middle of the capsule body. The Examiner's allegation that the capsule elevation (the discontinuity) in Valentini is a taper up to 5° as claimed is erroneous. The elevation of Valentini is substantially perpendicular (at an angle close to 90°) – and, thus, is not is not a taper up to 5°. The instant application differentiates between “tapers” and “elevations”, e.g., see claims 4 and 5. This difference, in tandem with the aforementioned symmetry requirements in claims 1 and 17, clearly distinguish over Valentini. Indeed, Valentini teaches away from a capsule with a symmetrical outer contour as claimed. The Examiner concedes, at page 3 of the Office Action, that Valentini lacks a detailed description of the claimed steps; however, the Examiner makes the erroneous conclusion that Valentini discloses the claimed structure. As the claimed symmetry is lacking in the device of Valentini, it discloses neither the claimed steps (of claim 1) nor the claimed structure (of claim 17).

As the subject dependent claims include the limitations of the base claim(s), they are likewise patentable. Accordingly, Applicant respectfully requests that the § 103 rejection of the subject claims be withdrawn.

Applicant submits that by not properly understanding the claim language (i.e., through error)

the Examiner did not address the merits of Applicant's arguments in the remarks section of the July 16, 2007 amendment. The Figure attached to this response has been provided to assist the Examiner in understanding a claim limitation that was already presented; however, Applicant submits that the Figure, while helpful, was not required to properly understand the claim limitation at issue or the July 16, 2007 remarks. Accordingly, Applicant requests the withdrawal of the finality of the Office Action, reconsideration of Applicant's remarks, and/or allowance of the application.

U.S. 5,947,118

At pages 6-8 of the Office Action, the Examiner rejected claims 11-16 under 35 U.S.C. § 103(a) as being obvious over U.S. 5,947,118 ("the '118 patent" or "Hochrainer"). Applicant respectfully traverses the Examiner's rejection.

Independent claims 1 and 16 require that "the features forming the outer contour of the capsule are symmetrical with respect to a transverse plane which bisects the longitudinal axis," excluding seams, elements smaller than 0.1 mm, and/or angles of taper up to 5°. As discussed above, the claimed process and structure regarding symmetry results in identical inflow and vibration conditions irrespective of the direction of insertion of the capsule into the inhaler. In response to Applicant's July 16, 2007 amendment, the Examiner stated, "Applicant argues that Hochrainer lacks capsule that are symmetrical with respect to a transverse plane. Again further argues that Hochrainer lacks 'elements smaller than 0.1 mm, and/or angles of taper up to 5 degrees. Once again, structures [e] which applicant argues for are recited as 'excluded' structure of the claimed invention." Again, as discussed above, Applicant submits that the Examiner misunderstands the claim language and has not giving same due consideration in view of the prior art.

Applicant submits that the capsule of Hochrainer does not fall within the exclusion to the conditions of symmetry as claimed in the present invention because Hochrainer does not teach or disclose the limitations as claimed. Although the Examiner alleges that the capsule of Hochrainer is symmetrical with respect to a transverse plane which bisects the longitudinal axis – as claimed –, such allegation is incorrect. Hochrainer teaches ribs that prevent the capsule from being symmetrical. Col. 2, lines 19-21, and FIGS. 1-5 of Hochrainer disclose capsule chambers with ribs

that hold the capsule in place and deform the capsule. Indeed, due to the deforming nature of the ribs in Hochrainer, the capsule chamber in Hochrainer can not meet the conditions of symmetry of the present invention as claimed. Thus, Hochrainer does not teach or disclose symmetrical capsules but rather teaches away from symmetry. The said deformities of the capsule of Hochrainer are not excluded from the conditions of symmetry. Therefore, the capsule is not symmetrical. The Examiner concedes that Hochrainer lacks a detailed description of the claimed steps; however, the Examiner makes the erroneous conclusion that Hochrainer discloses the claimed symmetry structure. As the claimed symmetry is lacking in the device of Hochrainer, it discloses neither the claimed steps (of claim 1) nor the claimed structure (of claim 16).

As the subject dependent claims include the limitations of the base claim(s), they are likewise patentable. Accordingly, Applicant respectfully requests that the § 103 rejection of the subject claims be withdrawn.

Again, Applicant submits that, through error, the Examiner has not addressed the merits of Applicant's arguments submitted in the July 16, 2007 remarks. Accordingly, Applicant requests the withdrawal of the finality of the Office Action, reconsideration of Applicant's remarks, and or allowance of the application.

In view of the foregoing, Applicant submits that the instant claims are in condition for allowance. Early and favorable action is earnestly solicited. In the event there are any fees due and owing in connection with this matter, please charge same to our Deposit Account No. 11-0223.

Dated: November 6, 2007

Respectfully submitted,

By s/Matthew B. Dernier/
Matthew B. Dernier
Registration No.: 40,989
KAPLAN GILMAN GIBSON & DERNIER LLP
900 Route 9 North, Suite 104
Woodbridge, New Jersey 07095
(732) 634-7634
Attorneys for Applicant